IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

G&K SERVICES, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
JONATHAN E. AMBLER	:	NO. 07-601

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Bartle, C.J. March 6, 2007

Before this court is the motion of plaintiff, G&K Services, Inc. ("G&K"), for a preliminary injunction to enforce a covenant not to compete contained in the employment agreement executed by it and defendant, Jonathan Ambler ("Ambler").[1] We have subject matter jurisdiction under 28 U.S.C. § 1332. The plaintiff corporation is a citizen of Minnesota, and defendant is a citizen of Maryland. The defendant does not dispute that this court has personal jurisdiction over him. The court held an evidentiary hearing on the motion and now makes the following findings of fact and conclusions of law.

I.

According to its most recent Annual Report, G&K is:

> a market leader in providing branded identity apparel and facility services programs ...

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1. The employment agreement prohibits G&K and Ambler from commencing a civil action relating to the agreement without first submitting the dispute for mediation. However, the employment agreement states: "Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of mediation." (emphasis added).

> serv[ing] a wide variety of North American industries including automotive, warehousing, distribution, transportation, energy, manufacturing, food processing, pharmaceutical, semi-conductor, retail, restaurants and hospitality, and many others providing them with rented uniforms and facility services products such as floor mats, dust mops, wiping towels, restroom supplies and selected linen items.

G&K Services, Inc., 2006 Annual Report (Form 10-K), at 3 (Sept. 14, 2006).

G&K has over 160,000 customers in 86 of the top 100 metropolitan areas in the United States and Canada and operates in 140 locations. The company employs a sales force to cultivate and expand its customer base and created various sales regions for this purpose.

G&K hired Ambler in December 2001 upon G&K's acquisition of Crestwear Uniform Supply, a division of Slan Companies. At the time of the acquisition, Ambler, a certified public accountant, was the Chief Operating Officer of Crestwear. He continued with G&K as the General Manager of the former Crestwear plant in Springfield, Virginia.

On December 31, 2004, G&K promoted Ambler to the position of Regional Director of Sales for its Eastern Region. The Eastern Region includes: Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, and Indiana. Upon receiving the promotion, he entered into a new employment agreement with G&K. The agreement was signed by Ambler and Troy

Bargmann ("Bargmann"), Vice President of the Eastern Region, on behalf of G&K. As consideration for entering into the employment agreement, Ambler received a salary increase and stock options. The agreement contained a "Non-Compete; Non-Solicitation" covenant which reads:

> Employee agrees that, while employed with Employer, and for a period of eighteen (18) months following the date of termination of Employee's employment with Employer for any reason, Employee shall not:
>
> 2.4.1 directly or indirectly, have any ownership interest or financial participation of greater than two percent (2%) in any Competing Company;
>
> 2.4.2 become employed by a Competing Company in any location where Employer is conducting business as of such date (the "Restricted Area");
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> 2.4.3 call upon, solicit or attempt to sell services or products to, or otherwise solicit purchases of services or products on behalf of a Competing Company from any customer or prospective customer with whom Employee (or any other employee or representative under Employee's supervision) has had direct or indirect contact or to whom Employee (or any other employee or representative under Employee's supervision) had directly or indirectly sold or attempted to sell services or products during the term of Employee's employment with Employer; or
>
> 2.4.4 solicit, induce or encourage any other employee of Employer to violate any term of his or her employment contract with Employer; or to directly or indirectly hire or solicit, induce, recruit or encourage any of Employer's employees for the purpose of hiring them or inducing them to leave their employment with Employer for Employee or any other person or party.

Pl.'s Ex. 3 at 3.

The headquarters for G&K's Eastern Region is located in Exton, Chester County, Pennsylvania, within this judicial district. While Ambler maintained a home office in Severna Park, Maryland, he spent several days a week traveling to meet with his various sales people throughout his region. During his tenure as Regional Director of Sales, Ambler became dissatisfied with the amount of traveling required and its effect on his personal life. He therefore spoke to Bargmann on several occasions to discuss the possibility of finding a non-peripatetic position within G&K. In mid-2006 Mr. Bargmann asked Ambler to remain in the Regional Director position until the end of G&K's 2007 fiscal year, which would occur on June 30, 2007.

Ambler then began to consider leaving G&K and finding another job that would not demand travel. In mid-December 2006 Ambler was approached by a recruiter with an opportunity at Alsco, a large privately owned business that operates at more than 120 locations throughout the world and supplies the same type of goods and services as G&K. Alsco was looking for an individual to serve as a plant manager at its newly acquired Alexandria, Virginia facility, a position comparable to Ambler's position as a plant manager with G&K before his promotion to Regional Director of Sales. Ambler had several interviews with executives at Alsco. On January 4, 2007, before receiving an offer from Alsco, he informed Mr. Bargmann that he would be leaving G&K. On January 9, 2007 Alsco offered Ambler the job of general manager of Alsco's Alexandria, Virginia plant, and he

accepted the position on January 10, 2007. He officially tendered his resignation to G&K on January 12, 2007. He began work at Alsco on January 29, 2007.

II.

At the outset defendant contests whether the Eastern District of Pennsylvania is the proper venue for this action. Under 28 U.S.C. § 1391, when, as here, subject matter jurisdiction is founded solely on diversity of citizenship, venue is proper in:

> (1) a judicial district where any defendant resides, if all defendants reside in the same state;
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> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated; or
>
> (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(a). Subsection (1) is inapplicable because defendant does not reside in the Eastern District. Likewise, venue cannot be predicated on subsection (3), as plaintiff concedes that the action could also have been brought in a number of different districts. We turn to subsection (2) and must determine whether a substantial part of the events or omissions giving rise to this claim took place in the Eastern District.

When analyzing the proper venue for a claim sounding in contract, our court has looked at several factors, including:

(1) where the contract was negotiated or executed; (2) where the contract was to be performed; (3) the location where the alleged breach occurred; and (4) where the alleged harm occurred. BABN Techs. Corp. v Bruno, 25 F. Supp. 2d 593, 597 (E.D. Pa. 1998). Plaintiffs are not required to pick the best forum or the one that is most convenient for the defendant. See Cottman Transmission Sys. v. Martino, 36 F.3d 291, 294 (3d Cir. 1994).

It is unclear from the record where Ambler's December 31, 2004 employment agreement was negotiated or executed. While the alleged breach may have occurred in Virginia, where Ambler has accepted employment with Alsco, the alleged harm to G&K has occurred in Exton, Pennsylvania, where G&K's Eastern Region is headquartered. We therefore focus on where Ambler's employment agreement was to be performed.

Although Ambler maintained a home office in Maryland and traveled during the week throughout G&K's Eastern Region, G&K's regional headquarters was located in Exton, Pennsylvania. Ambler's business cards and email signature listed his mailing address as the Exton office. From the time of his promotion until July 1, 2006, Ambler's immediate supervisor was located there. The record also shows that Ambler traveled to the Exton office on a regular basis, sometimes for several days at a time. It was in this office that he often engaged in conference calls with G&K corporate executives and managers and helped to develop corporate sales and market strategies. Ambler also signed receipts for confidential materials lent to him as part of

various training courses. They identify his G&K location as the Eastern Regional Office, which, as mentioned above, is in Exton. A substantial amount of Ambler's significant employment activities giving rise to plaintiff's claim took place in Exton, Pennsylvania. Accordingly, venue is proper in this judicial district.

III.

We now turn to whether it is appropriate to issue a preliminary injunction enforcing the non-compete covenant contained in Ambler's December 30, 2004 employment agreement. A preliminary injunction should be granted only if the plaintiff can establish: "(1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief." Kos Pharms., Inc. v. Andrx Corp., 369 F.3d 700, 708 (3d Cir. 2004). A preliminary injunction is inappropriate if the plaintiff fails to establish any element in its favor. P.C. Yonkers, Inc. v. Celebrations the Party & Seasonal Superstore, LLC, 428 F.3d 504, 508 (3d Cir. 2005).

It is undisputed that the employment agreement between G&K and Ambler contains a choice of law provision and that we must look to Minnesota law to determine the likelihood that G&K will succeed on the merits of its claim. The Minnesota Supreme Court has held that the applicable test of reasonableness for restrictive employment covenants is:

> whether or not the restraint is necessary for the protection of the business or good will of the employer, and, if so, whether the stipulation has imposed upon the employee any greater restraint than is reasonably necessary to protect the employer's business, regard being had to the nature and character of the employment, the time for which the restriction is imposed, and the territorial extent of the locality to which the prohibition extends.

Bennett v. Storz Broad., 134 N.W.2d 892, 899 (Minn. 1965). Under Minnesota law the "blue pencil doctrine" is available to modify unreasonable non-competes and enforce the agreement only to the extent that it is reasonable. Bess v. Bothman, 257 N.W.2d 791 (Minn. 1977). Therefore, if we conclude that the covenant is not reasonable, we may use the "blue pencil doctrine" to modify the covenant so that it is no broader than what is reasonably necessary to protect the employer.

It cannot be doubted that G&K has a strong interest in protecting its business and goodwill. G&K's success is contingent on cultivating the relationships it has built with existing customers and developing relationships with new customers. We must consider, however, whether the restrictive covenant in the employment agreement is reasonably necessary to protect that interest.

Under the employment agreement Ambler agreed that he shall not "become employed by a Competing Company in any location where [G&K] is conducting business ...." Pl.'s Ex. 3 at 3. The employment agreement defines competing companies as: "any person or entity that is engaged in the manufacture, renting, selling,

supplying, washing, cleaning, pressing, mending, dry-cleaning, processing, picking-up and delivery of uniforms, apparel, garments, mats, linens, towels and other industrial laundry items."

Ambler maintains that G&K is primarily a uniform rental business, whereas Alsco is primarily a linen rental business. He contends that uniform rental and linen rental are very distinct services, which require different infrastructures to be successful. G&K did tell Ambler, while he was its Regional Director of Sales, to decrease the volume of linen rentals in his region because they are less profitable than uniform rentals. Nevertheless, G&K remains very much in the linen rental business.

We find that both companies provide uniform and linen rental services and similar ancillary services and target similar customers, even though their mix of business may differ. Both companies market and sell all their services in northern Virginia, Washington, D.C., and the Maryland suburbs surrounding Washington. Of particular import is the location of G&K's plant in Laurel, Maryland. It provides linen rental services. Alsco's Alexandria, Virginia plant also provides linen rental services. These two plants are only some thirty miles apart. Customers such as hotels, restaurants, and healthcare facilities often rent both uniforms and linens. With the overlapping services and

close proximity, we find that the two companies are in direct competition.[2]

Ambler also contends that his new position with Alsco as General Manager of its Alexandria, Virginia plant would not require him to disclose any confidential or proprietary information that he acquired while employed at G&K and that he is more than willing to agree to such a restriction. His willingness to keep the confidences of G&K is commendable, but the nature and character of his job as General Manager of Alsco's Alexandria, Virginia plant will inevitably require him to draw upon his experience and knowledge gained while a high level employee with G&K. As Regional Director of Sales with G&K, Ambler focused on managing, training, and developing G&K's sales team with the goal of increasing G&K's sales and profits. While not the direct contact with G&K customers, as the Regional Director of Sales, he clearly knows its significant customers and the pricing schedules used in his region. As General Manager of Alsco's plant he is responsible not only for its operations, but also for the profitability of the plant. Although managing a sales team and managing a plant are distinct positions within

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2. Ambler pointed to G&K's Annual Report as evidence that it is not in competition with Alsco. The report stated: "Competitors include publicly held companies such as ARAMARK Work Apparel and Uniform Services (a division of ARAMARK Corporation), Cintas Corporation, UniFirst Corporation and others." G&K Services, Inc., 2006 Annual Report (Form 10-K), at 4 (Sept. 14, 2006) (emphasis added). Alsco is a privately held company. Thus, its exclusion from that list does not mean that it does not compete with G&K.

these companies, both positions require a person who can generate higher profits for these companies — companies whose business depends on cultivating and growing the customer base. Ambler was a highly compensated and valued employee with G&K, and he is currently a highly compensated and valued employee of Alsco. It is proper for G&K to have and to enforce a reasonable non-compete agreement against Ambler to protect its business and goodwill. See Bennett, 134 N.W.2d at 899.

The non-compete provision of Ambler's employment agreement has an extensive geographic scope. As noted above, it states that "Employee shall not ... become employed by a Competing Company in any location where Employer is conducting business ... (the 'Restricted Area')." Pl.'s Ex. 3 at 3. As mentioned above, G&K conducts business in 86 of the top 100 metropolitan areas in the United States and Canada, operating in 140 locations. G&K is "conducting business" in virtually the entire United States, and therefore, the non-compete provision for practical purposes imposes a nationwide restriction on Ambler. In Dynamic Air, Inc. v. Bloch, the Minnesota Court of Appeals explained that "a restrictive covenant on employment, lacking a territorial limitation is not per se unenforceable." 502 N.W.2d 796, 800 (Minn. Ct. App. 1993). However, the court's refusal to create a per se rule does not eliminate the need to analyze the reasonableness of the geographic scope. The court in Dynamic Air in fact noted "[a] restrictive covenant lacking a territorial limit perhaps will often be held to be unreasonable."

Id. We believe the national scope of the non-compete here is too broad.

Ambler's expertise on, and knowledge of, G&K's business is centered on G&K's Eastern Region. He did at times confer with the other Regional Directors of Sales, but his day-to-day job was focused more narrowly. We see little or no harm to G&K if Ambler works for Alsco outside of G&K's Eastern Region. Accordingly, we will "blue pencil" the covenant to limit the non-compete to G&K's Eastern Region, which consists of the states of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, and Indiana.

Ambler's employment agreement also restricts him "for a period of eighteen (18) months following the date of termination of Employee's employment with Employer for any reason." Pl.'s Ex. 3 at 3. "A particular time period is reasonable to the extent that it is necessary to obliterate the identification between the employer and employee in the minds of the employer's customers ...." Benfield, Inc. v. Moline, 351 F. Supp. 2d 911, 917 (D. Minn. 2004). We conclude that a one year restriction is sufficient to ameliorate any harm to G&K as a result of Ambler's employment with Alsco. Accordingly, we will exercise our discretion to use the "blue pencil doctrine" to reduce the applicable time period from 18 months to one year from the date of our decision here.

Because it is likely G&K will prevail on the merits of its claim, we must determine whether it will suffer irreparable

harm if the preliminary injunction is not granted. Ambler's 2004 employment agreement is controlling on this point. The agreement states:

> Employee acknowledges that irreparable harm will result to Employer, its business and property, in the event of a breach of this Agreement by Employee, and that any remedy at law would be inadequate; and therefore, in the event this Agreement is breached by Employee, the affected members of Employer shall be entitled, in addition to all other remedies or damages at law or in equity, to temporary and permanent injunctions and orders to restrain the violation hereof by Employee and all persons or entities acting for or with Employee.

By the terms of the agreement, Ambler has conceded not only that G&K will suffer irreparable harm by his breach of the agreement but also that G&K would be entitled to an injunction to restrain any violation of that agreement. Ambler thus concedes that the harm to G&K in refusing to grant the injunction outweighs any harm to Ambler if an injunction is granted. The facts support this concession. Ambler, a certified public accountant and an experienced businessman, agreed to a restrictive employment agreement with G&K and was prohibited from obtaining immediate employment with competitors such as Alsco. While an employee of G&K he was privy to confidential information, including knowledge of customers, sales strategies, and pricing. Yet, he went to work with Alsco in a high level position in a location close to where he had worked for G&K. The harm to G&K is severe. On the other hand, even if an injunction

is issued, Ambler may continue to work for Alsco outside G&K's Eastern Region and is free to obtain other employment.

Under the circumstances, we also find that the granting of a preliminary injunction limited to G&K's Eastern Region for a period of one year is in the public interest. The public has a compelling interest in the enforcement of contracts with reasonable non-compete provisions, particularly for high level employees.

IV.

Rule 65(c) of the Federal Rules of Civil Procedure, states:

> No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Fed. R. Civ. P. 65(c).

Our Court of Appeals has stated that a bond "provides a fund to use to compensate incorrectly enjoined defendants." Hoxworth v. Blinder, Robinson & Co., 903 F.2d 186, 210 (3d Cir. 1990). G&K must provide a security bond in the amount of $75,000.

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G&K SERVICES, INC.	:	CIVIL ACTION
v.	:	
JONATHAN E. AMBLER	:	NO. 07-601

ORDER

AND NOW, this 6th day of March, 2007, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

(1) defendant, Jonathan E. Ambler, is preliminarily ENJOINED, pending final resolution of this action, from employment with Alsco in the states of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, and Indiana for a period of one year from the date of this Order; and

(2) plaintiff must furnish a security bond in the amount of $75,000, to be filed with this court.

BY THE COURT:

/s/ Harvey Bartle III
C.J.